IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2488 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GOPAL RAMCHAND BHOGWANI - Appellant(s)
Versus
GARASIYA RANMULJI FULJI & 2 - Defendant(s)

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Appearance :
MR GAURANG H BHATT for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 28/02/2007

ORAL JUDGMENT

The appellant, who was original opponent no. 5 in Claim Petition No. 56 of 1985 before the Motor Accident Claims Tribunal [Aux.], Jamnagar

has challenged the finding in this appeal of the Tribunal holding him responsible along with original opponent no. 3 to satisfy the award made in favour of original claimant in the sum of Rs.62,000/- together with interest @ 15% p a and the proportionate costs. According to the appellant, he had sold the vehicle to respondent no. 3 and he had wrongly been saddled with the liability to satisfy the award.

2. In the instant case, girl aged 12 years lost her life in a vehicular accident that occurred on 18/2/1983 around 5.00 p.m. She happened to be daughter of original claimants. According to them, the accident occurred due to rashness and negligence of the driver of the offending vehicle. Therefore, they filed claim petition for obtaining compensation of Rs.60,000/-. Both, the appellant as well as respondent no. 3 herein were joined as opponents.

2.1. On the basis of the material produced before it, the Tribunal held the driver guilty of negligence. The Tribunal also held that the claimants were entitled to receive from original opponents no. 1 and 2 sum of Rs.62,000/- with 15% interest from the date of application till realization. As already stated above, the Tribunal directed that the recovery of the compensation could be made by the claimants from appellant as well as respondent no. 3. It is this part of the award which is under challenge in this appeal.

3. Mr. Gaurang Bhatt, learned advocate appearing for the appellant has submitted that the material on record showed that the vehicle was agreed to be sold to respondent no. 3 by agreement dated 10/8/1981 by charging the consideration in instalment and according to him, the entire amount was paid on 23/11/1982. The possession of the truck was handed over to respondent no. 3 on the date of receiving very first instalment. He has further submitted that the Civil Suit No. 502/1985 filed by the appellant to recover balance amount has also been dismissed on the ground that the entire payment was received by him. According to Mr. Bhatt, merely because the name in the RTO records has not been changed, it does not mean that the vehicle is not sold. He, therefore, submits that such direction of the Tribunal be quashed and set aside. The otherside, though served, has not appeared.

4. Having considered the submissions of Mr. Bhatt and having gone through the record of this appeal, it appears that in the present appeal the sole grievance of the appellant is with regard to the direction given by the Tribunal holding him jointly liable for satisfying the award along with respondent no. 3. The agreement to sell is at Exh. 44. It is between appellant and respondent no. 3. So far as the possession is concerned, it appears that there is no dispute. It was with respondent no. 3 on the date of accident. However, change in the RTO records was not effected and the vehicle still continued to be in the name of appellant on the date of accident. Mr. Bhatt has drawn my attention to the

decision of the Civil Judge [S.D.], Jamnagar rendered in Regular Civil Suit No. 508 of 1995, which is at Exh. 57. It was a suit filed by the present appellant to recover Rs.20,200/- on the ground that the said amount was outstanding for the purchase of the truck by respondent no. 3. The said suit was dismissed by the Ld. Judge on 31/12/1996. It is stated by Mr. Bhatt that Regular Civil Appeal No. 12/1997 against the said decree has also been dismissed by the District Court. No further challenge has been made to the dismissal of the appeal. It is, therefore, clear that so far as the appellant is concerned, he was paid the entire amount by respondent no. 3 and the possession of the vehicle was already taken by respondent no. 3 on the date of payment of first instalment. In view of the same, it clearly appears that the sale was complete and respondent no. 3 had become the exclusive owner of the vehicle in question. Only because vehicle stood in the name of the appellant in RTO records, it did not mean that the ownership of vehicle was his. In the case of T.V. Jose v. Chacko P.M., reported in AIR 2001 S.C. 3939, the Apex Court has held as under :-

> "10. We agree with Mr. Iyer that the High Court was not right in holding that the Appellant continued to be the owner as the name had not been changed in the records of R.T.O. There can be transfer of title by payment of consideration and delivery of the car. The evidence on record shows that ownership of the car had been transferred. However, the Appellant still continued to remain liable to third parties as his name continued in the records of R.T.O., as owner. The Appellant could not escape that liability by merely joining Mr. Roy Thomas in these

Appeals. Mr. Roy Thomas was not a party either before MACT or the High Court. In these Appeals we cannot and will not go into the question of inter se liability between the Appellant and Mr. Roy Thomas. It will be for the Appellant to adopt appropriate proceedings against Mr. Roy Thomas if, in law, he is entitled to do so."

4.1. In view of the above observations, the finding given by the Tribunal does not appear to be legal and it is required to be quashed and set aside and it is hereby quashed and set aside. It is now held that the appellant will not be responsible to satisfy the award along with respondent no. 3.

5. The learned Single Judge of this Court, on earlier occasion in First Appeal No. 2350 of 1995 had passed order dated 16/4/1999 in following terms :-

"(i) As and when the aforesaid amounts are deposited by the appellant before the Tribunal, the Tribunal shall permit the claimants to withdraw the amounts and all these amounts shall be paid by A/c. Payee Cheques in equal proportion to each of the claimants. The Tribunal shall make sure that the cheques are delivered personally to the claimants and the claimants shall be personally informed about the amounts being paid to them.

(ii) The Tribunal shall hear and decide the claim petition as expeditiously as possible and in any case within a period of four months from the date of receipt of a certified copy of this order or the writ of this Court, whichever is earlier.

(iii) While the appellant will be permitted to contest the claim petition and to file any appropriate application for joining any other party, the appellant shall not be heard ultimately if it is found that the appellant has not complied with the aforesaid condition for depositing Rs.15,000/- as per the aforesaid time schedule.

(iv) Ultimately if the appellant succeeds before the Tribunal in proving that he was not the owner of the vehicle involved in the accident on the date of the accident, it will be open to the appellant to recover the aforesaid amount of Rs.15,000/- from the person who is held to be the owner of the vehicle on the date of the accident."

In view of the above, the appellant is now given liberty to recover the amount of Rs.15,000/- deposited with this Court and hand-over to the original claimants and to recover it from the respondent no. 3.

Appeal is, therefore, allowed.

[Akshay H Mehta, J.]

* Pansala.